



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Doc. No. AMS-FV-13-0076; FV13-966-1 FR]

Tomatoes Grown in Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Florida Tomato Committee (Committee) for the 2013-14 and subsequent fiscal periods from \$0.024 to \$0.0375 per 25-pound carton of tomatoes handled. The Committee locally administers the Federal marketing order, which regulates the handling of tomatoes grown in Florida. Assessments upon Florida tomato handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Corey E. Elliott, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS,

USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793, or E-mail: Corey.Elliott@ams.usda.gov or Christian.Nissen@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866 and 13563.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida tomato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment

rate as issued herein will be applicable to all assessable Florida tomatoes beginning on August 1, 2013, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2013-14 and subsequent fiscal periods from \$0.024 to \$0.0375 per 25-pound carton of Florida tomatoes.

The Florida tomato marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of Florida tomatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area, and are therefore in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2012-13 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of \$0.024 per 25-pound carton of tomatoes that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on August 22, 2013, and unanimously recommended 2013-14 expenditures of \$1,824,600 and an assessment rate of \$0.0375 per 25-pound carton of Florida tomatoes. In comparison, last year's budgeted expenditures

were \$1,672,952. The assessment rate of \$0.0375 is \$0.0135 higher than the rate currently in effect. The Committee depleted its reserve by using the funds to help meet its annual expenditures over the past year. Therefore, the Committee recommended increasing the assessment rate to generate sufficient funds to cover expenditures and increase its reserve balance.

The major expenditures recommended by the Committee for the 2013-14 year include \$800,000 for education and promotion, \$458,500 for salaries, and \$300,000 for research. Budgeted expenses for these items in 2012-13 were \$750,000, \$436,372, and \$250,000, respectively.

The assessment rate recommended by the Committee was derived by reviewing anticipated expenses; expected shipments of Florida tomatoes; income from interest, Market Access Program funds, and specialty crop block grants; and the need to add additional funds to the reserve. Florida tomato shipments for the year are estimated at 35 million 25-pound cartons, which should provide \$1,312,500 in assessment income. Income derived from handler assessments, interest, and other sources should be adequate to cover budgeted expenses. Reserve funds projected to be \$440,500 will be kept within the maximum permitted by the

order of no more than approximately one fiscal period's expenses as stated in § 966.44.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations to modify the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2013-14 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural

Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 80 handlers of tomatoes subject to regulation under the marketing order and approximately 100 producers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those whose annual receipts are less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2012-13 season was approximately \$10.64 per 25-pound carton, and total fresh shipments were approximately 35.5 million cartons. Based on the average price, about 80 percent of

the handlers could be considered small businesses under SBA's definition. In addition, based on production data, grower prices as reported by the National Agricultural Statistics Service, and the total number of Florida tomato growers, the average annual grower revenue is below \$750,000. Thus, the majority of handlers and producers of Florida tomatoes may be classified as small entities.

This rule increases the assessment rate for the 2013-14 and subsequent fiscal periods from the current rate of \$0.024 to \$0.0375 per 25-pound carton of tomatoes. The Committee unanimously recommended the increased assessment rate and 2013-14 expenditures of \$1,824,600. The increase was recommended to generate sufficient funds to cover the Committee's expenditures and add to its reserve. As previously stated, income derived from handler assessments, interest, and other income should be adequate to meet this year's anticipated expenses.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the grower price for the 2013-14 season should average around \$9.73 per 25-pound carton of tomatoes. Utilizing this estimate and the proposed assessment rate of \$0.0375, estimated assessment revenue as a percentage of total

grower revenue would be approximately 0.4 percent for the season.

Alternative expenditure and assessment levels were discussed prior to arriving at this budget. However, the Committee agreed on \$1,824,600 in expenditures, reviewed the quantity of assessable tomatoes, the need to add additional funds to the reserve, and recommended an assessment rate of \$0.0375 per 25-pound carton of tomatoes.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. These costs are offset by the benefits derived from the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 22, 2013, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of

Management and Budget (OMB) and assigned OMB No. 0581-0178 Vegetable and Specialty Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Florida tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on December 24, 2013 (78 FR 77604). Copies of the proposed rule were also mailed or sent via facsimile to all Florida tomato handlers. Finally, the

proposal was made available through the internet by USDA and the Office of the Federal Register. A 15-day comment period ending January 8, 2014, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:

<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>.

Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the crop year began August 1, 2013, and the marketing order requires that the rate of

assessment for each fiscal period apply to all assessable Florida tomatoes handled during such fiscal period. Further, handlers are aware of this rule, which was unanimously recommended by the Committee at a public meeting. Also, a 15-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966 - TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 966.234 is revised to read as follows:
§ 966.234 Assessment rate.

On and after August 1, 2013, an assessment rate of \$0.0375 per 25-pound carton is established for Florida tomatoes.

Dated: February 18, 2014

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

Billing code 3410-02 P

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